

# TAX Alert

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## Transfer pricing sanctions in 2023

It has already become tradition that the new year means new changes in transfer pricing. At the end of last year, some of the regulations on verifying contractors for transactions with entities from tax havens, which were controversial amongst businesses, were repealed.

Nevertheless, year after year, with further changes in regulations, the importance of properly fulfilling the documentation obligation grows. What is there to look out for in terms of transfer pricing in 2023? According to amendments in the Fiscal Penal Code, entrepreneurs will face new sanctions for a failure to comply with documentation obligations concerning transfer pricing. These changes implement higher fines for the lack of documentation or its incorrect preparation.

### Sanctions resulting from the Fiscal Penal Code

The legislator has increased sanctions in the Fiscal Penal Code for not fulfilling transfer pricing obligations. The sanctions apply to such actions as:

- failure to prepare documentation,
- failure to attach group documentation,
- preparation of transfer pricing documentation which is inconsistent with the actual state.

For this type of offence, the taxpayer is liable to a fine of up to 720 daily rates. Late preparation of transfer pricing documentation is subject to a fine of up to 240 daily rates. Stricter sanctions are aimed at disciplining taxpayers into complying with obligations arising from transfer pricing regulations.

Pursuant to the applicable provisions of the Fiscal Penal Code, whoever fails to submit transfer pricing information to the competent tax authority (in a TPR form) or, upon submission, provides data inconsistent with the local transfer pricing documentation or

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with the actual state, is subject to a fine of up to 720 daily rates. Anyone who, contrary to the obligation, submits information after the deadline is subject to a fine of up to 240 daily rates. In case of a minor act, the authority may impose a fine for a fiscal offence.

**Important:** Please note that from 2023, taxpayers will no longer submit a separate statement on the preparation of transfer pricing documentation and on the arm's length nature of prices - it will be merged with the TPR form (previously it was a separate document). You can read more about changes in transfer pricing in 2023 [in this article](#).

### What is the amount of the fine?

Fines are levied by imposing a penalty amounting to multiple daily rates. These are regulated by Art. 23 § 3 of the Fiscal Penal Code, according to which a daily rate cannot be less than 1/30th of the lowest monthly salary, nor can it exceed its four-hundredfold.

From January 1st 2023, the minimum gross salary in Poland increased from PLN 3010 to PLN 3490. In consequence, with the beginning of 2023, the daily rate oscillates between PLN 116,33 and PLN 46 533,33 (in 2022 it oscillated between PLN 100,33 and PLN 40 133,33).

Fines for crimes and offenses related to transfer pricing documentation are as follows:

- **failure to prepare local documentation, failure to attach group documentation or preparation of transfer pricing documentation inconsistent with the actual state of affairs** - up to 720 daily rates, and thus in 2023 the maximum fine would be about PLN 33.5 million;
- **failure to prepare transfer pricing documentation on time** - up to 240 daily rates, and thus in 2023 the maximum fine would be about PLN 11.17 million;
- **failure to submit the TPR form to the competent tax authority or providing data inconsistent with the local transfer pricing documentation or with the actual state** - up to 720 daily rates, and thus in 2023 the maximum fine would be about PLN 33,5 million;
- **failure to prepare the TPR form on time** - up to 240 daily rates, and thus in 2023 the maximum fine would be about PLN 11.17 million.

**Important:** From 2023, the taxpayer is obliged to submit the TPR form (for 2022) to the competent head of the tax office, and not to the head of the national revenue administration as it was before.

### Not only board members are liable

Information on transfer pricing (including the statement contained therein) is signed by the head of the unit, i.e., a member of the management board or other governing body, and if the entity is managed by a body with multiple members - a designated person who

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is part of this body. The information cannot be signed by a holder of the power of attorney, with the exception of a holder of the power of attorney who is a solicitor, legal counsel, tax advisor or statutory auditor. Designating someone who comprises the multi-member entity to sign information on transfer pricing does not free other members of that body from liability for a failure to submit such information.

In case of a failure to submit the TPR form, or providing data that is inconsistent with the local transfer pricing documentation or with the actual state (or failure to submit it on time), these people are subject to penal fiscal liability specified in Art. 80e of the Fiscal Penal Code in the wording effective from 1st January 2022.

In the case of failure to prepare local transfer pricing documentation (or failure to submit it on time), failure to attach group documentation or preparation of transfer pricing documentation inconsistent with the actual state, fiscal penal liability referred to in Art. 56c of the Fiscal Penal Code in the wording applicable from 1st January 2022, may be incurred **not only by persons who are members of the management body of the entity, but also by persons dealing with the company's financial matters** (e.g. chief accountant).

It results from Art. 9 § 3 of the Fiscal Penal Code, according to which tax crimes or fiscal offenses are the responsibility of the perpetrator, but also the one who, on the basis of a legal provision, decision of the competent authority, contract or actual performance, deals with economic matters, in particular financial matters, of a natural person, legal person or an organizational unit without legal personality.

## Sanctions resulting from the Tax Ordinance

The sanctions specified on the basis of the provisions of the Fiscal Penal Code are not the only ones that a taxpayer may face for a failure to comply with the documentation obligation.

Additional tax liabilities (for the company) are regulated in Art. 58b and 58c of the Tax Ordinance and may have three different rates:

- 10% - the minimum level of sanctions on the amount considered by the Tax Office to be an understated income or overstated loss (while it is also necessary to pay tax and interest due for late payment);
- 20% - in the case of a failure to submit transfer pricing documentation (or incomplete submission) or when the basis for the additional tax liability exceeds PLN 15 million;
- 30% – in the case of failure to submit transfer pricing documentation **and when simultaneously** the value of the basis for determining the additional tax liability exceeds PLN 15 million.

Pursuant to the provisions, if the taxpayer completes the incomplete tax documentation within the time limit indicated by the authority, not longer than 14 days, the condition for lack of documentation is waived. However, this documentation must be complete and meet all formal requirements specified by the legislator.

What's important, an additional tax liability cannot be imposed on a natural person who is responsible in this case for a fiscal crime or fiscal offence.

If you have any questions or concerns regarding listed information, please contact us!

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# About KR Group

KR Group was established in Poland in 2000. Over the years the company has built a considerable position on the highly competitive market of accounting, tax, audit, payroll and HR services. KR Group applies an excellent understanding of business realities to its core services, thus attracting the most renowned companies in its portfolio of clients.

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- Interfaces and integration developed for most accounting and reporting software
- Knowledge-sharing tools and procedures ensuring time efficiency
- In-house developed accounting data warehouse connected with local accounting software.

For more information visit our website at [www.krgroup.eu](http://www.krgroup.eu)



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